

BEFORE THE
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

LINSEY LEE SMITH
505 N. Figueroa St., Apt. 528
Los Angeles, CA 90012

Occupational Therapist License Applicant

Respondent.

Case No. AL2008-154

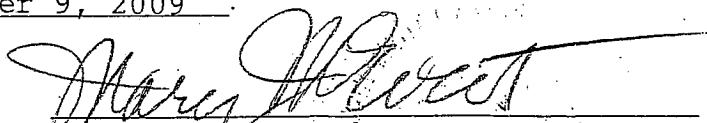
OAH No. 2009090373

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Occupational Therapy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on initial date of licensure.

It is so ORDERED December 9, 2009.



FOR THE CALIFORNIA BOARD OF
OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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8 **BEFORE THE**
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

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16 Respondent.
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Case No. AL2008-154

OAH No. 2009090373

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the California Board of Occupational Therapy of the Department
21 of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and
22 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
23 disposition of the Statement of Issues.

24 **PARTIES**

25 1. Heather Martin (Complainant) is the Executive Officer of the California Board of
26 Occupational Therapy. She brought this action solely in her official capacity and is represented
27 in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Susan
28 Melton Wilson, Deputy Attorney General.

2. Respondent Linsey Lee Smith (Respondent) is represented in this proceeding by Law Offices of Lewin & Levin, by Attorney Mark A. Levin, at Trident Center, 11377 West Olympic Boulevard, Fifth Floor, Los Angeles, California 90064-1683 (phone: (310) 312-3737).

3. On or about December 26, 2008, Respondent filed an application dated December 23, 2008, with the California Board of Occupational Therapy, Department of Consumer Affairs, State of California (Board) to obtain an Occupational Therapist License. The application was denied by the Board on June 17, 2009.

JURISDICTION

3. Statement of Issues No. AL2008-154 was filed before the Board and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on August 11, 2009. Respondent timely filed her Notice of Defense contesting the Statement of Issues. A copy of Statement of Issues No. AL2008-154 is attached as **Exhibit A** and incorporated herein by reference.

ADVICE AND WAIVERS

4. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. AL2008-154. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

5. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

3 13. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Board may, without further notice or formal proceeding, issue and enter the following
5 Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that an Occupational Therapist License will be issued to
8 Respondent LINSEY LEE SMITH and automatically revoked. The revocation will be stayed and
9 the Respondent placed on THIRTY (30) MONTHS probation on the following terms and
10 conditions.

11 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws and
12 regulations governing the practice of occupational therapy in California. Respondent shall
13 submit, in writing, a full detailed account of any and all violations of the law to the Board within
14 five (5) days of occurrence.

15 2. **Compliance with Probation and Quarterly Reporting.** Respondent shall fully
16 comply with the terms and conditions of probation established by the Board and shall cooperate
17 with representatives of the Board in its monitoring and investigation of the respondent's
18 compliance with probation. Respondent, within ten (10) days of completion of the quarter, shall
19 submit quarterly written reports to the Board on a Quarterly Report of Compliance form obtained
20 from the Board.

21 3. **Personal Appearances.** Upon reasonable notice by the Board, Respondent shall
22 report to and make personal appearances at times and locations as the Board may direct.

23 4. **Notification of Address and Telephone Number Change(s).**

24 Respondent shall notify the Board, in writing, within five (5) days of a change of residence
25 or mailing address, of her new address and any change in work and/or home telephone numbers.

26 5. **Tolling for Out-of-State Practice, Residence or In-State Non-Practice.**

27 In the event Respondent should leave California to reside or to practice outside the State for
28 more than thirty (30) days, Respondent shall notify the Board or its designee in writing within ten

1 (10) days of the dates of departure and return. All provisions of probation other than the quarterly
2 report requirements and education requirements, shall be held in abeyance until Respondent
3 resumes practice in California. All provisions of probation shall recommence on the effective
4 date of resumption of practice in California.

5 **6. Notification to Employer(s).** When currently employed or applying for employment
6 in any capacity in any health care profession, Respondent shall notify her employer of the
7 probationary status of respondent's license. This notification to the current employer shall occur
8 no later than the effective date of the Decision. Respondent shall notify any prospective health
9 care employer of her probationary status with the Board prior to accepting such employment.
10 This notification shall be made by providing the employer or prospective employer with a copy of
11 the Board's Accusation and Stipulated Settlement and Disciplinary Order.

12 Respondent shall cause each health care employer to submit quarterly reports to the Board.
13 The reports shall be on a form provided by the Board, shall include a performance evaluation and
14 such other information as may be required by the Board.

15 Respondent shall notify the Board, in writing, within five (5) days of any change in
16 employment status. Respondent shall notify the Board, in writing, within five (5) days if she is
17 terminated from any occupational therapy or health care related employment with a full
18 explanation of the circumstances surrounding the termination.

19 **7. Employment Requirements and Limitations.** During probation, Respondent shall
20 work in her licensed capacity in the State of California. This practice shall consist of no less than
21 (6) continuous months and of no less than twenty (20) hours per week.

22 While on probation, Respondent shall not work for a registry or in any private duty
23 position, except as approved, in writing, by the Board. Respondent shall work only on a regularly
24 assigned, identified, and pre-determined work site(s) and shall not work in a float capacity except
25 as approved, in writing, by the Board.

26 **8. Supervision Requirements.** Respondent shall obtain prior approval from the Board,
27 before commencing any employment, regarding the level of supervision provided to the
28 Respondent while employed as an occupational therapist.

1 Respondent shall not function as a supervisor during the period of probation except as
2 approved, in writing, by the Board.

3 9. **Continuing Education Requirements.** Respondent shall complete eight (8) hours of
4 continuing education course work on the subject of *Law and Ethics*, which must be approved by
5 the Board, and shall be completed within a period of time designated by the Board, which time
6 frame shall be incorporated as a condition of this probation. The referenced course work on the
7 subject of *Law and Ethics* shall be in addition to the professional development activities required
8 for license renewal.

9 Within thirty (30) days of the effective date of this Order, Respondent shall submit a written
10 plan to comply with this requirement. The Board shall approve such plan prior to enrollment in
11 any course of study.

12 Failure to satisfactorily complete the required continuing education as scheduled shall
13 constitute a violation of probation. Respondent is responsible for all costs of such continuing
14 education. Upon successful completion of the course(s), Respondent shall cause the instructor to
15 furnish proof to the Board within thirty (30) days of course completion.

16 10. **Maintenance of Valid License.** Respondent shall, at all times while on probation,
17 maintain an active current license with the Board, including any period during which license is
18 suspended or probation is tolled.

19 11. **Violation of Probation.** If Respondent violates probation in any respect, the Board,
20 after giving Respondent notice and opportunity to be heard, may revoke probation and carry out
21 the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed
22 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
23 is final, and the period of probation shall be extended until the matter is final.

24 12. **Completion of Probation – No Early Termination.** Respondent shall not be
25 considered for early termination of probation or modification of probation; she will be required to
26 complete the thirty month term of probation in compliance with all terms and conditions here
27 stated. Upon successful completion of probation, Respondent's license will be fully restored.

28 13. **Psychotherapy.** Within thirty (30) days of the effective date of the Decision,

1 Respondent shall submit to the Board the name of one (1) or more proposed therapists for prior
2 approval. Respondent shall participate in ongoing psychotherapy with a California licensed or
3 legally registered mental health professional approved by the Board. Upon approval by the
4 Board, Respondent shall commence psychotherapy, and Respondent shall continue in such
5 therapy at least one (1) time per month, for fifteen (15) consecutive months. Respondent shall
6 provide the therapist with a copy of the Board's Disciplinary Order no later than the first
7 counseling session. Cost of such therapy shall be paid by Respondent.

8 Respondent shall cause the therapist to submit to the Board a written report concerning
9 Respondent's psychotherapy status and progress as well as such other information as may be
10 requested by the Board. The initial psychotherapy report shall be submitted within sixty (60)
11 days from the effective date of the Decision. Respondent shall cause the therapist to submit
12 quarterly written reports to the Board concerning Respondent's fitness to practice, progress in
13 treatment and to provide such other information as may be required by the Board.

14 If the therapist finds that the Respondent is not fit to practice safely, or can only practice
15 with restrictions, the therapist shall notify the Board, in writing, within five (5) working days.
16 The Board shall notify Respondent to cease or restrict licensed activities as a condition of
17 probation. Respondent shall comply with this condition until the Board is satisfied of
18 Respondent's fitness to practice safely and has so notified Respondent. Respondent shall
19 document compliance with this condition in the manner required by the Board.

20 **14. Abstain From Controlled Substances.** Respondent shall completely abstain from
21 the personal use or possession of controlled substances, as defined in the California Uniform
22 Controlled Substances Act, and dangerous drugs as defined in section 4021 and 4022 of the
23 Business and Professions Code, *except* when lawfully prescribed by a health care professional
24 legally authorized to do so as part of documented medical treatment. Respondent shall have sent
25 to the Board in writing and within ten (10) days, by the prescribing health professional, a report
26 identifying the medication, dosage, the date the medication was prescribed, the Respondent's
27 prognosis, the date the medication will no longer be required, and the effect on the recovery plan,
28 if appropriate.

15. **Submit Biological Fluid Samples.** Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in the test results; positive test results will be immediately reported to the Board and the respondent's current employer.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mark A. Levin, Law Offices of Lewin & Levin. I understand the stipulation and the effect it will have on any Occupational Therapist License I may be issued by the Board of Occupational Therapy. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Board's Decision and Order.

DATED:

11/19/09

✓ ✓ ✓
Daisy Lee Smith

LINSEY LEE SMITH
Respondent

I have read and fully discussed with Respondent Linsey Lee Smith all terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

Nov. 19, 2009

W. J. L.

Law Offices of Lewin & Levin
By: MARK A. LEVIN
Attorney for Respondent

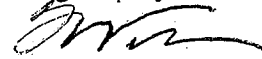
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Occupational Therapy of the Department of Consumer Affairs.

Dated: 11-25-09

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



SUSAN MELTON WILSON
Deputy Attorney General
Attorneys for Complainant

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